Jan 7/4 1864
Mr Bradford

809

Mr Justice Clifford

SUPREME COURT OF THE UNITED STATES.

No. ~~376.~~ 230.

THE PEOPLE OF THE STATE OF NEW YORK, EX REL. THE BANK OF THE COMMONWEALTH, PLAINTIFF IN ERROR,

vs.

THE COMMISSIONERS OF TAXES AND ASSESSMENTS FOR THE CITY AND COUNTY OF NEW YORK.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

GOVERNMENT PRINTING OFFICE.

26 NY 467
1st Dept case
Mr Justice Nelson

SUPREME COURT OF THE UNITED STATES.

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UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the court of appeals of the State of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals, before you or some of you, being the highest court of law or equity of the said State, in which a decision could be had in the said matter between the people of the State of New York, upon the relation of the Bank of the Commonwealth, plaintiffs, in a writ of certiorari, and the Commissioners of Taxes and Assessments for the city and county of New York, defendants therein, and which record and proceedings remain before you, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in ques-

tion the construction of a clause of the Constitution, or of a treaty or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Bank of the Commonwealth, relators, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday, day of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

[SEAL.] Witness the honorable Roger B. Taney, Chief Justice of the said Supreme Court, the first Monday of December, in

the year of our Lord one thousand eight hundred and sixty-three.

D. W. MIDDLETON,
Clerk Sup. Court U. S.
IRVING PARIS,
Att'y of Counsel for Plaintiffs in Error.

Allowed by

S. NELSON.

4 The answer of the judges of the court of appeals of the State of New York in the within writ named doth certify,
SEAL.] under the seal of our said court, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, and send the record whereof mention in said writ is made, with all things touching or in anywise concerning the same, as appears in a certain schedule to this writ annexed, as within it is commanded.

By the court.

COR'S TEN BROECK, *Dep Cl'k.*

5 THE UNITED STATES OF AMERICA.

To the commissioners of taxes and assessments of the city and county of New York, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the court of appeals of the State of New York, wherein the people of the State of New York, upon the relation of the Bank of the Commonwealth, are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel Nelson, one of the judges of the Supreme Court of the United States, this 28th day of March, in the year of our Lord one thousand eight hundred and sixty-four.

S. NELSON.

6 In the Supreme Court of the United States.

THE PEOPLE OF THE STATE OF NEW YORK, *ex rel.* The Bank of the Commonwealth, pl'ffs in error,

vs.

THE COMMISSIONERS OF TAXES AND ASSESSMENTS FOR THE CITY AND COUNTY OF NEW YORK def'ts in error.

UNITED STATES OF AMERICA,
State and County of New York, ss:

On the 31st day of March, in the year of our Lord one thousand eight hundred and sixty-four, before me, a notary public for the State of New York, duly authorized to administer oaths in the county aforesaid, personally appeared Irving Paris, of said city, who being by me duly sworn, made oath, that on the thirty-first day of March, A. D. 1864, at the office of the commissioners of taxes and assessments in said city, he served upon Jonathan W. Allen, one of such commissioners, personally, who was then presiding in said office, a copy

of the foregoing citation, by delivering such copy citation to the said Jonathan W. Allen personally, and leaving the same with him. Deponent further says, that at the same time he also delivered to and left with the said Jonathan W. Allen a copy of the writ of error allowed in this cause, and also a copy of the bond to the defendants accompanying the same, with a notice of the filing thereof; that he also exhibited to said Jonathan W. Allen the foregoing original citation; and deponent knew the person so served to be one of
6½ the defendants above named, and to be such commissioner as aforesaid.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal at the city of New York, on the day
[SEAL.] and year aforesaid.

IRVING PARIS.

Sworn before me this 31st day of March, 1864.

EDGAR IRVING,
Notary Public, State and County of New York.

7 Pleas before the justices of the supreme court of judicature of the people of the State of New York, held at the City Hall, in the city of New York, the third Monday of September, one thousand eight hundred and sixty-three.

Witness: JOSIAH SUTHERLAND,
Presiding Justice.
HENRY W. GENET, *Clerk.*

CITY AND COUNTY OF NEW YORK, *ss:*

Be it remembered, that on the first day of July, 1863, before the justices of the supreme court of judicature of the people of the State of New York, at a special term of said court held at the City Hall, in the city of New York, come the Bank of the Commonwealth, by Irving Paris, their attorney, and bring into the said court, before the aforesaid justices thereof, now here, their certain petition for a writ of certiorari, to be directed to the commissioners of assessments and taxes of the city and county of New York, which said petition follows in these words, that is to say:

8 In the matter of the taxation of the Bank of the Commonwealth.

To the supreme court of the State of New York:

The petition of the Bank of the Commonwealth respectfully represents:

That your petitioners are a banking association, duly organized under the provisions of the act of the legislature of the State of New York, entitled "An act to authorize the business of banking," passed April 18th, 1838, and the acts supplementary thereto and amendatory thereof, and that the principal office and place of business of

your petitioners is situated in the first ward of the city of New York.

Your petitioners further show, that they have, as required by law, made and delivered to the commissioners of assessments and taxes for the city and county of New York the written statement for the year one thousand eight hundred and sixty-three, duly verified by the oath of their president.

Your petitioners further show, that on the thirtieth day of June, instant, they presented to the commissioners of assessments and taxes for the city and county of New York their petition, in writing, duly verified by the oath of their president, which was in the words and figures following:

In the matter of the taxation of the Bank of the Commonwealth.

To the commissioners of assessments and taxes for the city and county of New York:

The petition of the Bank of the Commonwealth respectfully shows: That your petitioners are a banking association, duly organized under the provisions of the act of the legislature of the State of New York, entitled "An act to authorize the business of banking," passed April 18th, 1838, and the acts supplementary thereto and amendatory thereof.

Your petitioners further show that they have furnished to said commissioners the annual statement for the year 1863, as required by law; and as set forth in said statement, your petitioners now show and represent, that their capital stock actually paid in, or secured to be paid in, is the sum of seven hundred and fifty thousand dollars; that their real estate consists of their banking-house and lot of ground, known as number 15 Nassau street, situated at the northwest corner of Pine and Nassau streets, in the first ward of the city of New York, which is the principal office and place of business of your petitioners; that the sums actually paid for the said real estate are one hundred and eighty-eight thousand and ninety-nine dollars and eighty-four cents, which deducted from the whole amount of said capital stock, leaves the balance of said capital stock the sum of five hundred and sixty-one thousand nine hundred dollars and sixteen cents. A copy of said statement is hereto annexed, and your petitioners refer to the same as a part of their petition.

Your petitioners further show that the whole of the said last-mentioned balance and capital is loaned to the government of the United States, and the securities of the United States are held for the same by the said bank in the manner set forth by said statement, and that the allegations of the said statement in relation thereto are true.

Your petitioners further show that they have been served with a notification from the said commissioners in answer to their statement above mentioned, and to the claim for exemption therein made, which is in the words and figures following, viz:

OFFICE OF THE COMMISSIONERS OF TAXES AND ASSESSMENTS,
82 *Chambers street, New Court-house, New York*, 1863.

To EDWARD HAIGHT,
President of the Bank of the Commonwealth:

SIR: We beg leave to inform you that we have corrected the return of the Bank of the Commonwealth, and have assessed the personal estate at—

Capital	$750,000
Deducting cost of real estate	188,099
	561,900

The rolls will be returned to the board of supervisors on the first Monday of July next as corrected.

Respectfully,

A. J. WILLIAMSON,
J. W. ALLEN,
J. W. BROWN,
Commissioners of Taxes and Assessments.

Your petitioners claim that the said stocks and securities of the United States, and the said balance of the capital of your petitioners therein, are, under the Constitution of the United
11 States and the acts of the Congress, and the decisions and judgments of the Supreme Court of the United States, exempted from taxation under State authority; and they claim and demand that the said assessment roll for the year 1863 shall be corrected, by excepting and deducting therefrom the said assessment of your petitioners for their personal property, as is claimed and indicated in their statement and return aforesaid.

And your petitioners will ever pray, &c.

EDWARD HAIGHT, *Pres't.*

CITY AND COUNTY OF NEW YORK, *ss:*

Edward Haight, being duly sworn, says that he is the president of the Bank of the Commonwealth, the petitioners in the foregoing petition; that he has read the said petition and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and that as to those matters he believes it to be true. And further saith not.

EDWARD HAIGHT, *Pres't.*

Subscribed and sworn before me this 30th day of June, 1863.

R. M. HEDDEN,
Public Notary, City and County of New York.

12 Statement made and delivered to the commissioners of taxes and assessments of the city and county of New York, for and in behalf of the Bank of the Commonwealth, in pursuance of the provisions of title IV, chapter 13, part 1, of the Revised Statutes of the State of New York, and of the acts amendatory thereof, chapter 654, laws of 1853, and chapters 456 and 563, laws of 1857.

1st. Real estate owned by the said Bank of the Commonwealth, viz:

Their brown stone banking-house and lot of ground, 37½ feet in width by 80 feet in depth, situated in the first ward of the city of New York, at the northwesterly corner of Pine and Nassau streets. Sum actually paid therefor	$188,099 84
2d. Capital stock of the said Bank of the Commonwealth actually paid in and secured to be paid in	750,000 00
Excepting therefrom, paid for real estate, as above	188,099 84
Balance of personal property	561,900 16

The said Bank of the Commonwealth further states and report that they have loaned to the government of the United States the entire balance of their personal property above mentioned, namely, the sum of five hundred and sixty-one thousand nine hundred dollars and sixteen cents, being the entire amount of their capital stock after deducting the amounts paid for real estate as aforesaid; and
13 that they have taken and hold for such loans the securities of the United States, being stocks, bonds, notes, evidences of debt and securities for money.

They therefore claim that their said personal property and balance of their capital stock, so loaned and invested in the securities of the United States, are exempt from taxation by and under the Constitution and laws of the United States, and by and under the decision and judgment of the Supreme Court of the United States.

Amount so claimed to be exempt	$561,900 16
Balance subject to taxation, none	000,000 00

The said Bank of the Commonwealth claims that the whole balance of their capital, after deducting the amount paid for real estate, shall be excepted from the assessment roll; that they shall be assessed and taxed only in regard to their said real estate. Also, that their said real estate shall be assessed at its actual value, and be taxed in the same manner as the other real and personal estate of the county. —See laws of 1857, chap. 456, sec. 3.

3d. Amount of surplus profits or reserve funds exceeding ten per cent. of the capital above stated—none.

4th. The banking-house, or the place of transacting the financial business of the said Bank of the Commonwealth, is situated
14 in the first ward of the city of New York, at the northwesterly corner of Pine and Nassau streets, being the real estate above mentioned.

Dated New York, April 14th, 1863.

EDWARD HAIGHT, *Pres't.*

STATE OF NEW YORK,
City and County of New York, ss

I, Edward Haight, president of the Bank of the Commonwealth, being duly sworn, do certify and declare that the foregoing statement is, in all respects, just and true.

EDWARD HAIGHT, *Pres't.*

Subscribed and sworn before me this 14th day of April, 1863.
R. M. HEDDEN,
Notary Public, City of New York.

And your petitioners show and represent that the facts set forth in the said petition are in all respects true, and that the whole of the said balance of the capital of your petitioners is loaned to the government of the United States, and your petitioners are the true owners and lawful holders of the said public stocks and securities of the United States to the full amount of said balance.

And your petitioners further show, that on the said thirtieth day of June, 1863, the decision and answer of the said tax commissioners was made and given to your petitioners, and that the same was an entire refusal and denial by the said commissioners to grant
15 the said petition, and the said commissioners then made answer to said petition that they adhered to their decision and assessment, so as aforesaid notified to your petitioners.

And your petitioners further show, that at the time of presenting said petition to the said commissioners, your petitioners did, by their counsel, offer to the said commissioners that their said president should attend before said commissioners and be examined on oath, and make any other proof which might be requested or required, of the facts stated in the said petition; but said commissioners, by their chairman, expressly waived such attendance, examination, and proof.

And your petitioners show, that the said commissioners have decided to assess your petitioners upon the whole amount of the said balance of their capital stock, after deducting the amount paid for their real estate, namely, the sum of five hundred and sixty-one thousand nine hundred dollars and sixteen cents.

And your petitioners show, that they are advised, and believe, that they cannot lawfully be taxed in respect of the said balance of their capital so loaned and invested in public stocks and securities of the United States hereinbefore mentioned, and that the before-mentioned assessment should be corrected and excepted from the said assessment roll.

Your petitioners therefore pray that a writ of certiorari may issue, directed to the said commissioners, to review their proceeding
16 in relation to said assessment, and that such order and judgment may be rendered thereupon as may be comformable to law.

And your petitioners will ever pray, &c.

Dated New York, June 30th, 1863.

EDWARD HAIGHT, *Pres't.*

CITY AND COUNTY OF NEW YORK, *ss:*

Edward Haight, being duly sworn, says that he is the president of the Bank of the Commonwealth, the petitioners in the foregoing petition; that he has read the said petition and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and that as to those matters he believes it to be true. And further saith not.

EDWARD HAIGHT.

Subscribed and sworn to before me this 1st day of July, 1863.

R. M. HEDDEN,
Notary Public, City and County of New York.

Whereupon the people of the State of New York sent to the commissioners of taxes and assessments of the city and county of New York this writ of certiorari (close) in these words, viz:

[SEAL.] The people of the State of New York to the commissioners of taxes and assessments for the city and county of New York:

Whereas we have been informed by the petition of the Bank
17 of the Commonwealth that certain proceedings were had before you in regard to the assessment and taxation of the said petitioners for the year 1863, and that you had decided to assess the said petitioners on the assessment roll for that year upon the whole amount of their capital stock, after deducting the amount paid for their real estate, namely, the sum of five hundred and sixty-one thousand nine hundred dollars and sixteen cents, and had refused to correct the said assessment roll by excepting and deducting therefrom the assessment of the said petitioners, for the reason, as claimed by said petitioners, that the said amount of their capital is loaned to the government of the United States, and the public stocks and securities of the United States are held by the said petitioners for the same:

And we being willing, for certain reasons to be certified of such proceedings, do command you that you do certify and return those proceedings, and that part of your assessment roll relating to the same, and under what law, or by what power, the said assessment is made, and all things appertaining thereto, unto our supreme court, before the justices thereof, at a general term to be held at the City Hall, in the city of New York, on the third Monday of September, 1863, at eleven o'clock in the forenoon, under our hands, as amply as the same remain before you, so that our justices aforesaid may further cause to be done thereupon what of right and according to law ought to be done.

And have you then and there this writ.

Witness Hon. Josiah Sutherland, presiding justice of our
18 said supreme court, at the City Hall, in the city of New York, the first day of July, one thousand eight hundred and sixty-three.

By the court.

H. W. GENET, *Clerk.*
IRVING PARIS, *Attorney.*

{ U. S. Internal Revenue Stamp, 50 cents. }

At which day and place, that is to say, on the return day of the said writ of certiorari, come the said Bank of Commonwealth, by Irving Paris, their attorney, and the said commissioners of assessments and taxes of the city and county of New York, by John E. Develin, their attorney, also come, and the said commissioners of assessments and taxes, now here, make return to the said writ as follows :

To the supreme court of the State of New York :

We, the undersigned, commissioners of taxes and assessments for the city and county of New York, pursuant to a certain writ of certiorari delivered to us, and hereto annexed, do certify and return—

That the deputy tax commissioners did, under our direction, as by law required, assess the actual value of the capital stock of the Bank of the Commonwealth, after deducting the assessed value of its real estate, and all shares of stock in other corporations actually
19 owned by such company which are liable to taxation upon their capital stock under the laws of this State, and amount of stock held by charitable and literary institutions, at the sum of five hundred and sixty-one thousand nine hundred dollars, ($561,900 ;) and that such assessed valuation was duly entered at detail in the books provided for that purpose, and kept in the office of the said commissioners, called "The Annual Record of the Assessed Valuation of Real and Personal Estate," as appears by the extract hereto annexed, marked "B ;" that notice of such assessment was given to said bank ; that thereupon the officers of said bank did appear before us, and did complain of said assessments, and did present to us certain statements in writing, of which a true copy is hereunto annexed, marked "A."

That thereupon we, the said commissioners, did examine into the said complaint, and in our judgment the said assessment was and is correct, and we determined that the actual value of the said capital stock, after making the aforesaid deductions, was five hundred and sixty-one thousand nine hundred dollars, which we believed and now believe to be just, and such assessment stands in the said annual record of the assessed valuation of real and personal estate as an assessment for that amount against the said bank.

We further state that our decision thereon was declared, and such reduction made, within thirty days after the said application was made to us, as aforesaid, and prior to the first day of May, A. D. 1863 ; that said assessment so made, and our action thereupon, were under and to pursuance of the several laws of the State of
20 New York relating to the assessment and collection of taxes in the city and county of New York.

And we do further certify and return that the said Bank of the Commonwealth is, and for several years last past has been, a banking corporation created under and by the laws of the State of New York, and not otherwise, and under and in pursuance of such laws enjoys, and has during all said time enjoyed, certain privileges, and

is and has been subject to certain burdens, and, among other burdens, is and was at the time of such assessment subject to assessment and taxation upon the value of its capital stock, without regard to the fact that such capital stock, or any portion of it, might be invested in the public stocks, debts, or bonds of the United States; and that such assessment was not made upon the public stocks or bonds of the United States, but was made pursuant to the laws of said State of New York upon the capital stock of said bank, estimated at its just value, after making the exceptions and deductions required by the statutes of said State.

In testimony whereof, we, the said commissioners, have, respectively, to these presents subscribed our names and affixed our seals, at the city of New York, this 21st day of September, 1863.

A. J. WILLIAMSON. [L. S.]
JONA W. ALLEN. [L. S.]
J. W. BROWN. [L. S.]

21 "A."

In the matter of the taxation of the Bank of the Commonwealth.

To the commissioners of assessments and taxes for the city and county of New York:

The petition of the Bank of the Commonwealth respectfully shows: That your petitioners are a banking association, duly organized under the provisions of the act of the legislature of the State of New York, entitled "An act to authorize the business of banking," passed April 18, 1838, and the acts supplementary thereto and amendatory thereof.

Your petitioners further show, that they have furnished to said commissioners the annual statement for the year 1863, as required by law; and, as set forth in said statement, your petitioners now show and represent that their capital stock actually paid in, or secured to be paid in, is the sum of seven hundred and fifty thousand dollars; that their real estate consists of their banking-house and lot of ground, known as number 15 Nassau street, situated at the northwest corner of Pine and Nassau streets, in the first ward of the city of New York, which is the principal office and place of business of your petitioners; that the sums actually paid for the said real estate are one hundred and eighty-eight thousand and ninety-nine dollars and eighty-
22 four cents, which, deducted from the whole amount of said capital stock, leaves the balance of said capital stock the sum of five hundred and sixty-one thousand nine hundred dollars and sixteen cents. A copy of said statement is hereto annexed, and your petitioners refer to the same as a part of their petition.

Your petitioners further show, that the whole of the said last-mentioned balance and capital is loaned to the government of the United States, and the securities of the United States are held for the same by the said bank in the manner set forth by said statement, and that the allegations of the said statement in relation thereto are true.

Your petitioners further show, that they have been served with a notification from the said commissioners, in answer to their statement

above mentioned, and to the claim for exemption therein made, which is in the words and figures, viz:

OFFICE OF THE COMMISSIONERS OF TAXES AND ASSESSMENTS,
82 *Chambers street, New Court-house, New York,* 1863.

To EDWARD HAIGHT,
President of the Bank of the Commonwealth:

SIR: We beg leave to inform you that we have corrected the return of the Bank of the Commonwealth, and have assessed the personal estate at—

Capital	$750,000
Deducting cost of real estate	188,099
	561,900

The rolls will be returned to the board of supervisors on the first Monday of July next as corrected.

Respectfully,

A. J. WILLIAMSON,
J. W. ALLEN,
J. W. BROWN.
Commissioners of Taxes and Assessments.

Your petitioners claim that the said stocks and securities of the United States, and the said balance of the capital of your petitioners therein, are under the Constitution of the United States, and the acts of the Congress, and the decisions and judgments of the Supreme Court of the United States, exempted from taxation under State authority; and they claim and demand that the said assessment roll for the year 1863 shall be corrected, by excepting and deducting therefrom the said assessment of your petitioners for their personal property, as is claimed and indicated in their statement and return as aforesaid.

23

And your petitioners will ever pray, &c.

EDWARD HAIGHT, *Pres't.*

CITY AND COUNTY OF NEW YORK, *ss:*

Edward Haight, being duly sworn, says, that he is the president of the Bank of the Commonwealth, the petitioners in the foregoing petition; that he has read the said petition and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and that as to those matters he believes it to be true. And further saith not.

EDWARD HAIGHT, *Pres't.*

Subscribed and sworn before me this 30th day of June, 1863.

R. M. HEDDEN,
Notary Public, City and County of New York.

Statement made and delivered to the commissioners of taxes and assessments of the city and county of New York, for and in behalf of the Bank of the Commonwealth, in pursuance of the provisions of

title IV, chapter 13, part 1, of the revised statutes of the State
24 of New York, and of the acts amendatory thereof, chapter 654, laws of 1853, and chapters 456 and 563, laws of 1857.

1st. Real estate owned by the said Bank of the Commonwealth, viz:

Their brown stone banking-house and lot of ground, 37½ feet in width by eighty feet in depth, situated in the First ward of the city of New York, at the northwesterly corner of Pine and Nassau streets. Sum actually paid therefor	$188,099 84
2d. Capital stock of the said Bank of the Commonwealth actually paid in and secured to be paid in	750,000 00
Excepting therefrom—	
Paid for real estate as above, ...	188,099 84
Balance of personal property	561,900 16

The said Bank of the Commonwealth further states and report, that they have loaned to the government of the United States the entire balance of their personal property above mentioned, namely, the sum of five hundred and sixty-one thousand nine hundred dollars and sixteen cents, being the entire amount of their capital stock after deducting the amounts paid for real estate as aforesaid; and that they have taken and hold for such loans the securities of the United States, being stocks, bonds, notes, evidences of debt and securities of money.

They therefore claim that their said personal property and
25 balance of their capital stock, so loaned and invested in the securities of the United States, are exempt from taxation by and under the Constitution and laws of the United States, and by and under the decision and judgment of the Supreme Court of the United States.

Amount so claimed to be exempt	$561,900 16
Balance subject to taxation, none	000,000 00

The said Bank of the Commonwealth claims that the whole balance of their capital, after deducting the amount paid for real estate, shall be excepted from the assessment roll; that they shall be assessed and taxed only in regard to their said real estate. Also that their said real estate shall be assessed at its actual value, and be taxed in the same manner as the other real and personal estate of the county.—(See laws of 1857, chap. 456, sec. 3.)

3d. Amount of surplus profits or reserve funds exceeding ten per cent. of the capital above stated, none.

4th. The banking-house, or place of transacting the financial business of the said Bank of the Commonwealth, is situated in the first ward of the city of New York, at the northwesterly corner of Pine and Nassau streets, being the real estate above mentioned.

Dated New York, April 14th, 1863.

EDWARD HAIGHT, *Pres't.*

STATE OF NEW YORK,
City and County of New York, ss:

I, Edward Haight, president of the Bank of the Commonwealth, being duly sworn, do certify and declare that the foregoing statement in all respects is just and true.

EDWARD HAIGHT, *Pres't.*

Subscribed and sworn before me this 14th day of April, 1863.

R. M. HEDDEN,
Notary Public, City of New York.

"B."

Banks.

Name.	Place of business.	Ward.	Corrected amount.
Commonwealth, Bank of the.	15 Nassau.	1.	561,909

At a general term of the supreme court of the State of New York, at the city of New York, on the 30th day of November, 1863.

Present: Hon. Josiah Sutherland, P. J.; Hon. William H. Leonard and Hon. William F. Allen, justices.

THE PEOPLE, *ex rel.* the Bank of the Commonwealth,
against
THE COMMISSIONERS OF TAXES AND ASSESSMENTS OF THE CITY AND COUNTY OF NEW YORK.

This matter having been brought to a hearing at a general term of this court, in the city of New York, on the 28th day of September, 1863, upon the petition, certiorari, and return thereto, and counsel for the relators and for the board of commissioners of taxes and assessments of the city and county of New York, named in said petition, writ and proceedings, having been heard, and the court having reviewed upon the merits the decision and action of said commissioners: Now, on motion of John E. Develin, of counsel for said commissioners,

It is ordered, adjudged, and decreed, that the proceedings and determinations of the said commissioners in the assessment of the said relators be, and the same hereby are, in all respects confirmed and held valid; and it is further adjudged that the said commissioners recover from the above-named relators their costs and disbursements, to be taxed by the clerk of the court.

And thereupon the costs and disbursements of the said commissioners are adjusted by the said clerk, and allowed by this court to the sum of forty-six dollars and twenty-seven cents.

Judgment signed this 19th day of December, one thousand eight hundred and sixty-three.

H. W. GENET, *Clerk.*

Marked: "Filed Dec. 19, 1863."

But because the said Bank of the Commonwealth being aggrieved by the order and judgment of the said court, at general term last above set forth, the said bank, by Irving Paris, their attorney, have this day duly filed and served their certain notice of appeal therefrom, in the words and figures following, to wit:

28 New York supreme court.

THE PEOPLE, *ex rel.* THE BANK OF THE COMMONWEALTH, plaintiffs in a writ of certiorari, appellants,
against
THE COMMISSIONERS OF TAXES AND ASSESSMENT FOR THE CITY AND COUNTY OF NEW YORK, respondents.

Please to take notice, that the plaintiff hereby appeal to the court of appeals from each and every part of the order and judgment entered herein on the 19th day of December, one thousand eight hundred and sixty-three, before the general term of this court, as well such part of the said order and judgment as affirms the proceedings of the said commissioners of taxes and assessments, as such part thereof as adjudges that the relators pay the costs of the said commissioners herein.

Dated New York, Dec. 21st, 1863.

Yours, &c.,
IRVING PARIS,
Attorney for Relators.

To JOHN E. DEVELIN, Esq.,
Attorney for Defendants.

HENRY W. GENET,
Clerk for the City and County of New York.

29 STATE OF NEW YORK,
City and County of New York, ss:

I, Henry W. Genet, clerk of the supreme court of the said State in and for the said city and county, do hereby certify that the preceding consists of certified copies of the judgment roll and notice of appeal on file in my office.

In testimony thereof, I have hereunto subscribed my name and affixed my official seal this twenty-first day of December, [SEAL.] A. D. 1863.

H. W. GENET, *Clerk.*

30 Court of appeals.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of the Bank of the Commonwealth, appellants,
against
THE COMMISSIONERS OF TAXES AND ASSESSMENTS FOR THE CITY AND COUNTY OF NEW YORK, respondents.

The appeal in this cause having been argued by Mr. Alexander W. Bradford, of counsel for the plaintiff appellants, and by Mr. James

T. Brady and Mr. John E. Develin, of counsel for the defendants respondents, and due deliberation having been had thereon, it is ordered that so much of the judgment of the supreme court appealed from by the said plaintiff appellants as awards costs to the defendants be, and the same is hereby reversed, and that the said judgment be, and the same is hereby, in all other respects, affirmed.

And the relators having claimed exemption under and by virtue of the second section of the act of Congress, entitled "An act to authorize the issue of United States notes, and for the redemption or funding thereof, and for funding the floating debt of the United States," passed February 25th, 1862, and by virtue of the eighth section of the first article of the Constitution of the United States, from the taxation mentioned in the record in this cause, on the ground that
31 the amount of their capital stock in that respect mentioned in said record is invested in the public debt of the United States; and the validity of the authority claimed under the statute of the State of New York, entitled "An act in relation to the taxation of moneyed corporations and associations," passed April 29th, 1863, to impose the tax mentioned in the said record, being drawn in question, it is certified that the judgment of this court is against the relators against such exemption, and in favor of the validity of such authority.

(A copy) COR'S TEN BROECK,
Dep. Cl'k, Court of Appeals of the State of New York.

32 In the Supreme Court of the United States of America.

THE PEOPLE OF THE STATE OF NEW YORK, upon the relation of the Bank of the Commonwealth, plaintiff, in errors,
against
THE COMMISSIONERS OF TAXES AND ASSESSMENTS FOR THE CITY AND COUNTY OF NEW YORK, defendants in error.

Know all men by these presents, that we, Paul Spofford, of the city and county of New York, and Edward Haight, of Westchester, in the county of Westchester and State of New York, are held and firmly bound unto the above named, the commissioners of taxes and assessments for the city and county of New York, defendants, their successors and assigns, in the sum of one thousand dollars, to be paid to the said commissioners of taxes and assessments, their successors or assigns, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the twenty-eighth day of
33 March, one thousand eight hundred and sixty-four.

Whereas the above-named the people of the State of New York, upon the relation of the Bank of the Commonwealth, have prosecuted to the Supreme Court of the United States a certain writ of error to reverse the judgment rendered in the above-entitled matter by the judges of the court of appeals of the State of New York—

Now, therefore, the condition of this obligation is such, that if the above-named the Bank of the Commonwealth, relators as aforesaid, shall prosecute the said writ of error to effect, and answer all damages and costs which, upon an affirmance of the said judgment of the respondents in error, or upon a dismissal of the said writ of error, may be adjudged or decreed to the said commissioners of taxes and assessments, respondents as aforesaid, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

(S'd) PAUL SPOFFORD. [L. S.]
(S'd) EDWARD HAIGHT. [L. S.]

Sealed and delivered in the presence of—
(S'd) R. M. HEDDEN.

34 STATE OF NEW YORK,
City and County of New York, ss:

On this twenty sixth day of March, one thousand eight hundred and sixty-four, before me came Paul Spofford and Edward Haight, known to me to be the same individuals described in and who executed the foregoing instrument, and severally acknowledged that they duly executed the same as their act and deed for the uses and purposes therein mentioned and expressed.

(S'd) R. M. HEDDEN, *Notary Public.*

UNITED STATES OF AMERICA,
State, City, and County of New York, ss:

Paul Spofford, being duly sworn, says that he is a resident of the city and county of New York, and a freeholder in the State of New York, and that he is worth the sum of two thousand dollars over and above all his debts, liabilities, and responsibilities, and besides his property by law exempt from execution.

(S'd) PAUL SPOFFORD.

U. S. Rev. Stamp, 5 cts., Cancelled.

Subscribed and sworn before me this 26th day of March, 1864.
R. M. HEDDEN, *Notary Public.*

35 UNITED STATES OF AMERICA,
State, City, and County of New York, ss:

Edward Haight, being duly sworn, says that he is a resident of Westchester, Westchester county, and a freeholder in the State of New York; that he is worth the sum of two thousand dollars over and above all his debts, liabilities, and responsibilities, and besides his property by law exempt from execution.

(S'd) EDWARD HAIGHT.

Subscribed and sworn to before me this 26th day of March, 1864.
(S'd) R. M. HEDDEN, *Notary Public.*

U. S. Rev. Stamp, 5 cts., Cancelled.

Filed April 2d, 1864.

230

In the Supreme Court

OF THE UNITED STATES.

THE PEOPLE OF THE STATE OF NEW YORK, ON THE RELATION OF THE BANK OF THE COMMONWEALTH, THE AMERICAN EXCHANGE BANK, AND OTHERS,

against

THE COMMISSIONERS OF TAXES AND ASSESSMENTS OF THE CITY AND COUNTY OF NEW YORK.

STATEMENT AND POINTS.

ALEXANDER W. BRADFORD,
WM. M. EVARTS,
E. L. FANCHER,
Of Counsel for Relators.

JAMES EMMOT,
ALEXANDER W. BRADFORD,
Of Counsel for THE BANK OF THE COMMONWEALTH.

NEW YORK:
WM. C. BRYANT & CO., PRINTERS, 41 NASSAU ST., COR. LIBERTY.
1864.

Wm. C. Bryant & Co., Printers, 41 Nassau Street, cor. Liberty, N. Y.

833

IN THE

Supreme Court

OF THE UNITED STATES.

The People of the State of New York, on the Relation of the Bank of the Commonwealth, the American Exchange Bank, and others,

against

The Commissioners of Taxes and Assessments, of the City and County of New York.

Statement.

This was a proceeding for the correction of the Assessment Roll for the year 1863, in the hands of the Commissioners of Taxes and Assessments of the city and county of New York, in relation to the assessment of the Bank of the Commonwealth, a Banking Association, transacting business in the city of New York. A similar proceeding was instituted by the American Exchange Bank and others.

These banks were formed under the general Banking Law, enacted by the Legislature of New York in the year 1838

The Commissioners derived their official powers under the 302 chapter of the Laws of New York, 1859. By the 10th and 11th sections of that act, they are authorized upon application by any person considering himself aggrieved by the assessed valuation of his real or personal estate—to correct the assessment roll; and it is provided that, "if in their judgment, the assessment is erroneous, they shall cause the same to be corrected." (This act is substantially the same as ch. 677 of the Laws of New York of 1857.)

The proceeding was instituted by *certiorari* under section 20 of the Act, which provides that "a *certiorari* to review and correct on the merits any decision or action of the said Commissioners, under sections 10 and 11 of this Act, shall be allowed by the Supreme Court or any Judge thereof, directed to the said Commissioners, on the petition of the party aggrieved."

The writ was returned into the Supreme Court of New York, at a General Term, held at the city of New York, on the third Monday of September, 1863.

A decision was made against the relators, and judgment taken thereon, at the November Term of that Court.

The statement of the relators, The Bank of the Commonwealth, presented to the Commissioners, shows that

The amount of the capital stock of the bank is	$750,000 00
The amount invested in real estate is.....	188,089 84
Which being deducted from the capital leaves it.....	$561,165 16
The amount of personal property, *the residue of the capital stock, all of which, namely,*	561,165 16

has been loaned to the Government of the United States; and for which the Bank has taken and holds the securities of the United States, in stocks, bonds, notes, evidences of debt, and securities of money: and they therefore claimed that the said personal property and balance of their capital stock so loaned and invested in the securities of the United States are exempt from taxation, by and under the Constitution and laws of the United States, and by and under the decision and judgment of the Supreme Court of the United States.

The Commissioners refused to allow any exemption of the amount so invested, and this decision was affirmed by the Supreme Court at General Term.

The Commissioners, in their return to the writ, certify that they assessed, "as by law required," "the actual value of the capital stock," deducting investments in real estate, at $561,900; that the bank was "subject to assessment and taxation upon the value of its capital stock, without regard to the fact that such capital stock, or any portion of it, might be invested in the public stocks, debts, or bonds of the United States, and that such assessment was not made upon the public stocks or bonds of the United States, but was made pursuant to the laws of the State of New York, upon the capital stock of said bank, estimated at its just value, after making the exceptions and deductions required by the statutes of said State."

The Bank of the Commonwealth, the present relators, had, in the year 1859, instituted a similiar proceeding for the purpose of procuring exemption from taxation upon $103,000, of its capital, invested in United States stocks of the loan of 1858. The Commissioners refused to allow the exemption, and their decision was affirmed by the Supreme Court, and the Court of Appeals of the State of New York.

The judgment of the Court of Appeals was reversed by the Supreme Court of the United States. This decision was made in March, 1863, and without reference to the Act of Congress of February 25, 1862, the investment of the capital being made anterior to that statute, and in stocks issued long before.

The Legislature of the State of New York, shortly after this determination of the Supreme Court, on the 29th of April, 1863, passed an act which was signed by the Governor, and took effect as a law on that day.

The following is the entire law:

"*An Act in Relation to the Taxation of Moneyed Corporations and Associations.*"

SECTION 1. All banks, banking associations, and other monied corporations and associations, shall be liable to

taxation, on a valuation equal to the amount of their capital stock, paid in or secured to be paid in, and their surplus earnings, (less ten per cent. of such surplus,) in the manner now provided by law, deducting the value of the real estate, held by any such corporation or association, and taxable as real estate. Section 2. This act shall take effect immediately."

Laws of 1863, ch. 240.

The question now arises, whether the exemption from taxation upon so much of its capital as The Bank of the Commonwealth has invested in securities of the United States, which was declared by the judgment of the Supreme Court of the United States, has been destroyed by this act of State Legislation.

Preliminary Point.

Notice of motion has been given to dismiss these appeals, and by consent the motion is to be heard at this time.

We assume that the grounds are matters appearing upon the face of the record. The record shows that the decision involves the constitutionality of a State law, and the adjudication of the highest Appellate Court of the State, that the law is not in conflict with the Constitution of the United States.

First.—The claim of the plaintiffs through the whole course of proceedings is, that the capital of the banks is all invested in the securities of the United States, and is exempted from State taxation under the Constitution of the United States, and that the law, if authorizing a levy of the tax, is invalid.

That such was the question, not only appears from the decision of the Commissioners, and the Courts, but from the final judgment of the Court of Appeals, where the claim of exemption under the Constitution, and Act of Congress, is recited, and also that the validity of the Act of the Legislature of New York was drawn in question, and it is certified that the judgment of the Court was against such exemption, and in favor of the validity of such law.

Second.—If it be urged that the decisions of the Courts of the several States in respect to the construction of local statutes are final, we reply that this rule never obtains where such interpretation involves rights under the National Constitution and Laws.

Elmendorff *vs.* Taylor, 10 Wheaton, 153.
Shelby *vs.* Guy, 11 Wheaton, 361.
McNeil *vs.* Holbrook, 12 Peters., 84.

Otherwise, all Constitutional questions arising under State laws might be drawn into a final jurisdiction of construction.

No State Court has ever admitted that a law was adverse to the Constitution and at the same time held it to be valid.

The claim always has been, that laws thus called in question were not unconstitutional, in the proper construction of the law, and of the Constitution.

The Statute of New York under which authority to tax is claimed and exercised, is valid or invalid, as in harmony with or adverse to the Constitution; the determination of this question necessarily involves the construction both of the Constitution and the Law. And if the determination of the State Court on the interpretation of the law be conclusive, the jurisdiction of this Court upon such constitutional question is abrogated.

First Point.

Since the decision in the cases noted below, of the Supreme Court of the United States, the Supreme Tribunal in all cases involving the supremacy of the Constitution of the United States over State Legislation, there can no longer remain a doubt that the power of the General Government to borrow money upon the faith and credit of the United States, cannot in any way be impaired or affected by State taxation.

Bank of Commerce *vs.* The Commissioners of Taxes. The Bank of the Commonwealth *vs.* The Same, 2 Black., p. 620.

1. The decisions of the *State Courts* should, in all cases, conform not only to the rule laid down by the Supreme Court, but also to *the grounds and principles* upon which the rule has been founded and enunciated.

2. It is also incumbent upon the *Legislatures of the respective States* to conform to the rule so established, and to *the grounds and principles* upon which the rule has been founded and enunciated.

3. If the Legislature fail in this respect, the Constitution, and its Judicial interpretation by the Supreme Court, being the supreme law of the land, it becomes the duty of the State Judiciary to correct all errors of State Legislation in this respect.

4. The rule, as judicially declared, imparts to the power of the Government to borrow money—*complete immunity*.

First.—From any direct interference by the States, by way of prohibition.

Second.—From any direct interference by the States in respect to the lender, the money loaned, or to be loaned, or the certificates or evidences of indebtness.

Third.—From any *indirect* interference by the States in respect to the lender, the money loaned, or to be loaned, or the certificates or evidences of indebtedness, by way of prohibition, impediment, or loading.

Taxation is such an interference with this immunity—and is therefore unconstitutional and void.

Whether the tax be reasonable; whether it be not discriminative; whether it be on the whole, or on a part of the property taxed; and whether it be levied upon persons or upon corporations, are all matters of indifference—Taxation in any mode is invalid—The *modus* is utterly indifferent—In whatever way taxation may be accomplished, it conflicts with the power of the Government to borrow money, and that power is supreme.

By the Act of Congress, 1862, it was declared that securities of the United States, "whether held by individu-

als, *corporations*, or associations, shall be exempt from taxation by or under State authority." This law was declarative. It announced by legislative authority a rule flowing from the Constitution, and judicially determined.

Second Point.

The effect of the rule, as judicially declared, is to withdraw the stocks of the United States entirely from the bulk of taxable property in the State.

"The stock is not taxable in any shape or manner whatever—it is not to be included in the estimate of property subject to taxation"—so this was understood, as far back as the case of Weston *vs.* City of Charleston.

2 Peters, 475, (Thompson J, dissenting.)

"The question recurs, whether there is anything in the Constitution of the United States, which, by a fair interpretation, forbids this State, under the tax laws, from including in the aggregate valuation af the tax payers' property, in respect of which he is to be taxed, money which he has lent to the Federal Government, for which he holds its evidence of indebtedness."

Denio, C. J., in Bank of the Commonwealth *vs.* Tax Commissioners, 23 N. Y. R., p. 193.

"We have a principle, which leaves the power of taxing the people and property of a State unimpaired; which, leaves to a State the command of all its resources, *and which places beyond its reach*, all those powers which are conferred by the people of the United States on the Government of the Union, and all those means which are given for the purpose of carrying these powers into execution. We have a principle which is safe for the State and safe for the Union."

Nelson, J., in Bank of Com. *vs.* Tax Com., Supreme Court of U. S., above cited.

Third Point.

Under the General Statutes of the State of New York, there is no subject of taxation except "lands" and "personal estate."

Nothing is taxed, except property. 1 Rev. Stat., Marg., p. 888, § 1.

All the statutes of the State on the subject of taxation are in *pari materia*, and are to be construed together.

(1.) The first title of the chapter "*of the Assessment and Collection of Taxes*," is entitled, "of the *property* liable to taxation"; and the first section of the statute declares that "all lands and all personal estate within this State, whether owned by *individuals* or by *corporations*, shall be liable to taxation, subject to the exemptions hereinafter specified."

(2.) By the third section, the terms "personal estate" or "personal property," are defined to include "*public stocks*, and stocks in *monied corporations*," and also "such portion of the *capital* of incorporated companies, liable to taxation on their capital, as shall not be invested in real estate."

(3.) The exemptions from taxation also show that it is only *property* which is taxed.

By the fourth section it is declared "the following PROPERTY shall be exempt from taxation:

1. All preperty, real and personal, exempted from taxation by the Constitution of this State, or *under the Constitution of the United States.*

2. All lands belonging to this State or to the United States.

3. Every building erected for the use of a college, incorporated academy, or other seminary of learning; every building for public worship; every school-house, Court-

house, and jail, and the several lots whereon such buildings are situated, and the furniture belonging to each of them.

4. Every poor-house, alms-house, house of industry, and every house belonging to a company incorporated for the reformation of offenders, and the real and personal property belonging to or connected with the same.

5. The real and personal property of every public library.

6. All stocks owned by the State, or by literary or charitable institutions.

7. The personal estate of every *incorporated company* not made liable to taxation on its capital, in the Fourth Title of this chapter.

8. The personal property of every minister of the gospel, or priest of any denomination, and the real estate of such minister or priest, when occupied by him, provided such real and personal estate do not exceed the value of one thousand five hundred dollars; and

9. All property exempted by law from execution.

§ 7. The owner or holder of any stock in any incorporated company *liable to taxation on its capital*, shall not be taxed as an individual for such stock.

(4.) That it is only property which is to be assessed and taxed, further appears by the Second Title of the Statute, "of the place and manner in which *property* is to be assessed."

§ 1. Provides that every person shall be assessed in the town or ward where he resides, &c., and

§ 6. That the real estate of all incorporated companies liable to taxation shall be assessed in the town or ward in which the same shall be, *in the same manner as the real*

estate of individuals and "all the personal estate of every *incorporated company* liable to taxation on its capital shall be assessed in the town or ward where the principal office, &c., shall be."

(5.) That it is only *property* which is taxable, further appears by the provisions of the fourth title, declaring that "all monied or stock corporations deriving an income or profit from their *capital* shall be liable to taxation on their *capital* in the manner" thereinafter prescribed.

By the sixth section of this Title, the assessors are required to enter upon their assessment rolls "*the property*" of all incorporated companies—namely the amount of its capital stock paid in, and secured to be paid in, the amount invested in real estate, and the amount of its stock belonging to the State, to incorporated literary and charitable institutions—and the latter amounts are to be deducted from the former before taxation.

Fourth Point.

Persons, whether natural or artificial, may be taxed; thus there may be a poll or capitation tax. There may also be personal requisitions to perform public duties; and likewise taxes upon certain acts and trades by way of license or excise.

These are all in their nature essentially different from a tax on property.

The general law of the State of New York has no mode of assessing or levying such duties, in the provisions relating to the taxation of property.

If they can be assessed and levied, it must be by some system independent of the method of taxing property, contained in the Revised Statutes.

The franchise, which consists in the privilege of being a corporation, if taxable in the State of New York, must be taxed as a franchise; if taxed rateably, as to property, it is a tax on property.

Fifth Point.

It is of no material consequence whether a tax be levied on a person natural or artificial in respect to property, or on the property itself. Under any system where property is the criterion of taxation, and affords the basis of a rate or assessment, the tax may be said to be a tax upon the property—or a tax upon the person or institution owning it, in respect to such property.

It is only a different mode of announcing the same proposition.

"In this State all taxation is upon property. It is the same thing in substance, to say that it is upon the owner in respect to property." (Comstock, J., 23 N. Y. R., 192.)

There may be a difference in the mode of assessing and valuing the property of a person and the property of a corporation; but supposing the mode the same in each case, viz., that of *actual valuation*, then as to exemptions under the Constitution of the United States, the position of a bank "is precisely the same as that of an individual tax-payer. It is, as a general rule, assessed and taxed for all its property of every kind; but there is an exception as to such part of its property, as the Constitution and laws of the Union, and of the States, have upon special reasons of policy, declared shall be exempted. Whether such exempt property is found in the hands of an individual, or in the possession of a corporation taxed upon the actual value of its capital, the *rule is the same*, the exempt property is to be deducted from the aggregate valuation, and the tax is to be imposed on the residue." (Denio, C. J., in 23 N. Y. R., 192.)

Sixth Point.

The privilege of exemption from taxation on so much property as may have been loaned to the Government of the United States, cannot be made to depend on the *mode of valuation*, either of the property of an individual, or of a corporation.

If so dependent, it is obvious that the immunity of the Government from taxation upon its means of borrowing money amounts to nothing.

1. Such a method of taxing is equivalent to saying, property shall be taxed without reference to its mode of investment. Thus, exemption would be avoided by simply refusing to consider what constitutes the basis of exemption.

2. And this can be done as well with reference to individuals as corporations.

Individuals may be taxed on "*a valuation*" equal to the cost price of their property, "paid, or secured to be paid."

This would be just as definite and invariable as the assessment of corporations on a "valuation" equivalent to the amount of capital stock paid in, or secured to be paid in—and so exemption from taxing government stock be avoided altogether.

3. The immunity from taxation arises from the fact of having loaned money to the Government, and taken evidences of debt in lieu thereof.

Exemption, in other words, arises from having parted with capital, and being the *present* owner of Government securities.

The State cannot tax the security in any way; but instead of taxing what the Bank has now, it taxes what the Bank had—*i. e.*—what it had, when it commenced business; or else it taxes what it has now, at a valuation of what it had when it commenced business.

It is quite clear, therefore, that one who has loaned his money to the Government, though he is not taxable on United States securities, is really taxed on the sum which he has loaned to the Government.

It is manifestly the same thing to tax the security and to tax the money which produced the security. In either case alike, the power of the Government to borrow money is taxed by the State.

Seventh Point.

But this power cannot be taxed. By the Constitution of the United States, Congress has power "*to borrow money on the credit of the United States.*"

This is one of the constitutional means which the Government of the United States is authorized to employ for its national purposes.

As such, it is entirely beyond the interference, legislation, and dominion of the States.

This is not a concurrent power with *taxation*, but a concurrent power with the right to *borrow*. Powers to be concurrent must be *in pari materia*.

The principle of the exemption is based upon the National Sovereignty and the *supremacy* of the Constitution, and all acts of the Government lawfully performed under it.

The National Sovereignty being conceded, "it is of the very essence of supremacy to remove all obstacles to its action within its own sphere, and so to modify every power vested in the subordinate governments, as to *exempt* its own operations from their *influence*."

Marshall, in McCulloch *vs.* The State of Maryland, 4 Wheaton, 316.
Brown *vs.* State of Maryland, 12 Wheaton, 419.
Osborn *vs.* Bank of U. S., 9 Wheaton, 738.
Dobbins *vs.* Erie County, 16 Peters, 435.
Weston *vs.* City of Charleston, 2 Peters, 459.

"All subjects over which the sovereign power of a State extends are objects of taxation, but those over which it does not extend are upon the soundest principles *exempt from taxation*. The proposition may almost be deemed self-evident." *Ibid.*

Eighth Point.

While these principles must be conceded, having been authoritatively determined by the Supreme Court of the United States, it may be said that the State does not tax the power to borrow money, nor the credit of the Government, nor the evidence of debt in the hands of the lender; but only taxes the lender upon a fixed valuation, without regard to the manner in which his property has been invested. In other words, that the mode of invesment is indifferent.

The answer to this suggestion is, that the tax necessarily falls on the Government, in whatever way it is effected. The tax affects the value of the stock. The Government which borrows money, subject to taxation, will receive as much less per centum from the lender as would nearly equal a capital sufficient to raise an interest equivalent to the rate of taxation. (Smith's Wealth of Nations, 2, p. 278.) Stock which at par would pay six per cent. interest without taxation, would only be worth 66, if the lender be obliged to pay a tax of two per cent.

The tax is evidently a direct and immediate impediment to the power of borrowing money. If it reached six per cent., it would exclude the Government from the market, and annihilate a constitutional power essential to the existence of the Government.

"To tax the contract when made must operate upon the power to borrow, before it is exercised, and have a sensible influence on the contract."—*Marshall. Ibid.*

All taxes upon the transfer of property from lender to borrower fall finally, as well as immediately, upon the party to whom the property is transferred or loaned.

Smith's Wealth of Nations, 2, p. 281.

The lender looks to his net income.

Ninth Point.

It being obvious that the burden of the tax, in whatever mode levied, falls upon the National Government, the converse is equally true, that the privilege of exemption enures to the benefit of the Government.

It is not individuals—not the lenders—who are benefited, but the United States.

If the lender is exempted, the Government has the advantage.

And this privilege is one which appertains to all the functions of the Government, arising as it does from the supremacy of the Government.

Tenth Point.

It follows, from the preceding premises, that any method of State taxation which bears upon the power of the United States to borrow money is invalid.

To tax the aggregate of the tax-payers' property, is unlawful, to the extent it includes United States securities.

To tax the aggregate at a fixed or nominal valuation, as of a date prior to the acquisition of United States securities, only varies the mode of valuation, but does not vary the result.

So, likewise, in respect to corporations.

To tax the aggregate of their capital, is unlawful to the extent it includes Government stocks.

To tax the aggregate at a fixed or nominal valuation, as of a date prior to the acquisition of Government stocks, can only vary the mode of valuation, but does not vary the result.

In each and every case, the United States, which, when the tax was levied upon an actual value, was exempt, now, when the tax is levied upon a nominal value is no longer exempt, if by changing the mode of valuation, the exemption can be escaped.

Eleventh Point.

It has been urged however, that "corporations are the mere creatures of the Legislature, which may impose upon them such restrictions and limitations as it pleases for the privileges and advantages which it confers."

The sovereignty over a corporation because it is a corporation, to sustain the argument, must be *unlimited.*

If this be true, then it is within State authority to compel a corporation to pay taxes on Government securities—a power which it has just been decided by the Supreme Court of the United States, the State does not possess.

If it be repugnant to the Constitution to tax individuals and corporations on Government securities directly, how can it be less so to tax corporations on the ground they are "mere creatures of the Legislature?"

The exemption does not depend upon the character of the persons who claim it, but is an attribute of the Government.

It is not the different guise of the act of legislation, nor whether it be exercised under one form of sovereignty or another, which constitutes the rule of exemption or non-exemption—but the exemption flows from the immunity of the thing itself—the credit of the United States. "If it has been shown that stocks of the United States Government cannot be subjected to taxation when owned by an individual, the rule is necessarily the same when they are held by a corporation. *The rule is the exemption of the thing or subject*, and it has no respect to the ownership. There is not one interpretation of the Federal Constitution when an individual claims exemption under it, and another one when a corporation makes the same claim."

Comstock, J., 23, N. Y. R., p. 192.

1. The banking associations incorporated under the act of 1838 have power to lend money to the General Government. This power is given by State legislation. They have made the investment thus authorized, and acquired property exempt from taxation.

"The suggestion has been made that the Legislature may

tax corporations in any mode and to any extent as the price of the privileges and franchises conferred in their charters. This is true as to all subjects to which the taxing power of the State extends. But when a corporation acquires property such as is absolutely exempt from all burdens imposed by the States, under the higher authority of the Constitution of the United States, by inevitable logic, such property is acquired and held free from taxation." "The exemption, if it exists at all, is the result of a constitutional principle, which operates in all circumstances, and follows the property wherever it goes." Comstock, J., in 23, N. Y. R., p. 192.

2. We deny, however, that the authority of the State over corporations can be exercised so as to become the indirect medium of taxing the credit of the General Government.

This is claimed under the power to alter charters.

That power was reserved for good and beneficent purposes, and for the furtherance of the public welfare.

So far as its exercise is made the medium by which unconstitutional objects are sought to be gained, the object of the reservation is transcended.

The reservation extends to a full repeal—the same power which could modify the law so as to levy the tax indirectly, could denounce the extinction of the banks if they failed to pay a tax on United States stocks.

If this power be supreme, it can levy the tax directly. It cannot be needful to travel through *byways* to exercise its sovereignty.

3. That the State has no greater power over corporations than it has over individuals, is manifest from the late decision of the Court of Appeals of New York, in the case of the Metropolitan Bank vs. Van Dyck. There the power of the Bank Superintendent to compel payment of bank notes, was held subordinate to the power of the Government to make treasury notes a legal tender. The analogy was recognized, to the immunity of the Government securities, from State taxation: declared in the case of the Bank of Commonwealth, in the U. S. Supreme Court.

Twelfth Point.

In the sense of special grants, privileges and franchises, there are no longer any charters, under the General Incorporation Acts of the State.

1. By the Constitution of 1846, it was provided that—

"Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the object of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section, may be altered from time to time or repealed." Art. 8, Sec. 1.

"Franchises are special privileges conferred by government on individuals, and which do not belong to the citizens of the country generally by common right."

Angell & Ames on Corporations, § 4.
Newark City Bank vs. Assessors of Newark.
The American Law Register, July, 1864, p. 558.

Upon this change in the organic law, it became obvious that the idea of special franchises, except in particular cases, had been abandoned. Corporations were no longer esteemed as the recipients of special grants, or royalties, but simply as bodies, coming into existence by their own volition under general laws.

They were subjects of favor and approbation, and justly regarded as objects of encouragement.

Their creation was invited, not conceded.

2. The Legislature of 1847, acting in harmony with the spirit of this section of the Constitution, provided as follows:

"All individual bankers, and all banking associations, which are now, or *shall be hereafter*, engaged in the business of banking, under the provisions of an act entitled "An Act to authorize the business of banking," shall be

subject to taxation on the full amount of actual capital paid in, or secured to be paid in, as such capital, severally, *at the actual market value* of such securities, to be estimated by the Comptroller, without any deduction for the debts of such individual banker or banking association." Laws 1847.

3. At a very early period, a discrimination was made between manufacturing corporations and other corporations. This discrimination originated as early as the year 1817, when the "American System" was in vogue, and when it was thought wise and patriotic to encourage domestic manufactures.

The preference in favor of this class of companies was indicated—1. By allowing them to be formed under general acts of incorporation. 2. By taxing them only upon the *actual value* of their stock. (The People *vs.* The Utica Ins. Co., 15 J. R., 382; The Columbian Manufacturing Co. *vs.* Vanderpoel, 4 Cowen, 557; The Bank of Utica *vs.* The City of Utica, 4 Paige, 402; The Union Cotton Manufacturing Co. *vs.* The Supervisors of Oneida, 1 Barb. Ch. R., 448.)

4. When, by the mandate of the Constitution, the Legislature was called upon to pass general acts of incorporation, and was forbidden to grant special charters, except for municipal purposes, &c., it seemed proper to place the banks, then existing under the act of 1838, on the same footing as manufacturing companies; and this no doubt led to the provision of the act of 1847, taxing the banks upon the market value of their capital.

5th. In 1853, another change took place, approximating the mode of taxing corporations to that of individuals. All corporations were made taxable on surplus profits, exceeding ten per cent. (Laws of 1853, Ch. 654, p. 1240.)

6th. Finally, by the act of 1857, all distinctions in respect to corporations, however, or for whatsoever purpose created, were swept away. The provisions of the revised statutes relating to the taxation of manufacturing, turnpike and

marine insurance companies were repealed, and all corporations were made taxable on the "*actual value*" of capital, except so much as might be "*exempted by law,*" and the capital was directed to be "*taxed in the same manner as the other personal and real estate of the county.*" (Laws. 1857, Ch. 456.") (Sections 7, 11, 12, 13, of title 4, 1 R. S. 414, were repealed by Ch. 634, Laws. 1853. Sections, 9, 10, 14 were repealed by Ch. 456, Laws. 1857.)

We may justly conclude, then, from the whole tenor of the State legislation, and from the constitution of 1846, that there is no countenance to be given to the idea of any special favor, or act of royalty in the creation of corporations. They receive nothing from legislative bounty for which they are bound to pay. They come into existence by general statutes, and by the will of the people expressed in the organic law.

They are subjects of the taxing power, the same as individuals, upon the general ground of State sovereignty, and not by reason of being recipients of legislative favor.

Thirteenth Point.

From the passage of the act of 1857 to April 1863, a period of six years, the banks were exempt from taxation on funds loaned to the United States, whatever may have been the just construction of the statutes previous to 1857, (*Dolloway* vs. *The Oswego Starch Factory*, 21 N. Y. R., 449.)

"It follows, therefore, from the very language of the statutes, that if the bank of the Commonwealth has invested a part of its capital paid in, in a stock which is exempt from taxation under the Constitution of the United States, such portion is excepted from the assessment." Denio. C. J., in 23 N. Y., 192.

The banks had previously under State authority (Laws 1840, Ch. 363; Laws of 1849, Ch. 313,) been invited to purchase Government securities. They have subsequently, and in full view of the immunity from taxation, under the

Constitution of the United States, and under the constitution and laws of this State, loaned large amounts to the General Government, sustaining its finances in a period of great pressure.

If the law of 1863 be valid, and if its legitimate effect be to render that taxable, which before was not taxable, then money loaned to the Government by the banks has no longer any immunity from State sovereignty.

Confessedly these securities now held were acquired during a period from 1857, when, by the method of taxation, they were exempt. This exemption was a vested right, and cannot be impaired by any State law. *Dodge vs. Woolsey*, 18 Howard, 330.

Fourteenth Point.

The Act of April, 1863, applies only to "Banks, Banking Associations, and other moneyed Corporations and Associations." It leaves other corporations to be taxed under the Law of 1857. It relates simply to moneyed institutions—the only class of corporations likely to invest in Government securities. Taking this in view, as well as the time and occasion of its passage, there would seem to be no doubt of its object.

At the moment of its passage the Supreme Court had recently declared these institutions exempt from taxation on the securities of the United States to whom money had been loaned to the amount of many hundred millions of dollars.

The intention of the law must be deduced from its language and from its practical result.

First.—It is a cardinal rule in the interpretation of statutes, that they are to be construed, so far as possible in harmony with existing statutes, *in pari materia*, not expressly repealed.

Second.—Also, that they are to be construed, so far as possible, in harmony with the constitutional duty of the

Legislature—in respect both to the organic law of the State and of the United States.

Third.—That effect is to be given only so far as their provisions are not in conflict with the provisions of the organic law, as interpreted by the appropriate tribunal.

1. In the application of these rules, we find that the act in question deals only with "*taxation.*" It is entitled "An Act in Relation to the *Taxation* of Moneyed Corporations and Associations," and declares they "shall be liable to *taxation*, on a *valuation* equal to the amount of their *capital stock*, paid or secured to be paid in, and, their surplus earnings, (less ten per cent. on such surplus.")

2. No special mode is provided for raising the tax, but the tax is directed to be levied "*in the manner now provided by law.*" So that the entire body of the existing law on the subject of taxation is to be taken as intact and operative, except so far as disturbed by the new act.

We are thus referred to the Revised Statutes, by the tenor of which it is only property that is taxable; by the express language of which all property exempt under the *Constitution of the United States* is declared exempt.

And to the law of 1857, which provides that:

"*The capital stock* of every company liable to *taxation*, except such part of it as has been excepted in the assessment roll, or as shall have been *exempted by law*, together with its reserved profits or reserved funds exceeding ten per cent. of its capital, after deducting the assessed value of its real estate, and all shares of other corporations actually owned by such company, which are taxable on their capital stock under the law of this State, shall be assessed at its actual value, and taxed in the same manner as the other real and personal estate of the county."

And we are also referred to the Act of 1859, the very law by which these Commissioners were constituted, under which they made their assessment, and which requires their depu-

ties "to assess all the taxable property" in their several districts, from which the Commissioners are to make up "the annual record of the assessed valuation of real and personal estate," from which the assessment rolls are copied.

4. Supposing there was no intention to conflict with the ruling of the Supreme Court of the United States and its legitimate consequences, we might construe the act as in harmony with the existing law thus wise—

Monied corporations shall be taxable on their property real and personal, as follows:

a. On real estate, at its actual value.

b. On capital paid in, or secured to be paid in, at a valuation equal to its original amount, deducting—

(1.) The assessed value of their real estate.

(2.) All property exempt by law, or under the Constitution of the United States.

(3.) Shares of other corporations taxable on their capital stock.

(4.) Amount of stock held by the State, or by charitable or literary institutions.

The exemption contained under the second subdivision is reached by reference to the decision of the Supreme Court of the United States, and also the exemption declared under first title of Ch. XIII. of the Revised Statutes.

Now, it is remarkable that the tax commissioners have allowed these exemptions, so far as they relate to shares in other corporations, and stock owned by charitable and literary institutions, but have rejected the exemption in favor of the United States. The former stood alone under the protection of the State law; the latter, under the protection of the State law and of the Constitution of the United States, a law of Congress, and a decision of the Supreme Court, which are the supreme law of the land.

Again, the Commissioners return that they have assessed

"*the actual value*" of the stock. This is in obedience to the law of 1857. They determined, they say, "the actual value of the said capital stock," and they maintain that the bank, being a corporation, is liable to State burdens, and, "among other burdens, it is, and was at the time of such assessment, subject to assessment and taxation upon the *value* of its capital stock, without regard to the fact that such capital stock, or any portion of it, might be invested in the public stocks, debts, or bonds of the United States, and that such assessment was not made upon the public stocks or bonds of the United States, but was made pursuant to the laws of said State of New York, upon the capital stock of said bank, *estimated* at its *just value, after making the exceptions and deductions required by the statutes of said State.*"

These exceptions and deductions required by the statutes of said State are those contained in the First Title of Ch. XIII., 1st part of the Revised Statutes.

The same statute exempted property from taxation which is exempt UNDER THE CONSTITUTION OF THE UNITED STATES.

On what ground, then, and under what color of authority, could the Commissioners have allowed the former, and rejected the latter? Is one class of exceptions preferable over another? Is one more sacred than the other?

The law of 1857 required an assessment of the *actual value* of the stock, the same as other personal estate in the county.

The law of 1863 calls for a valuation equal to the amount of the original stock.

Between these two, the Commissioners seem to have been in a state of perplexity.

They return that they assessed the actual value. This actual value could only have been ascertained by looking into the *investments* of the capital and the surplus; and yet they repudiate any regard to the mode of investment, and adopt a valuation equivalent to the original capital.

Fifteenth Point.

To construe the law of 1863 in harmony with pre-existing statutes, and with constitutional requirements, it should be read as making liable to taxation, at a valuation equal to its original amount, only so much of the capital as is *not exempt* by other provisions of law, or under the Constitution of the United Stotos. Thus, if in the case of a bank having a capital of $500,000, a part, say $100,000, is invested in United States stocks, $50,000 is owned by literary and charitable institutions, and $50,000 is in the stock of other corporations liable to taxation, the remaining $300,000, after making these deductions, can be rated at its original amount.

In this there would be no transgression of the Constitution of the United States.

Sixteenth Point.

But, if it be true that the act of 1863 was intended to effect a taxation of the entire amount of the capital of a bank, whether invested in loans to the General Government or not, then we claim that the act was framed and passed with the intention to avoid the force and effect of the decision of the Supreme Court of the United States.

Such an evasion could only be attempted by *indirection*. If the act had declared expressly that banks were taxable on so much of their capital as was invested in securities of the United States, the act would most clearly have been void.

It is manifest, therefore, that they could not be assessed upon the property which they *actually had*.

And yet it is only upon the property which one *has*, that a tax can be levied under the general law.

To alter the basis of taxation, therefore, it was requisite to change it from present property to past property.

And then we would have this result, that the immunity of the power of the Government to borrow money from

State taxation can be avoided, by taxing the lender for what he had before he made the loan.

And we meet the further difficulty, that, under statutes professing to tax property existing at the time of taxation, a tax can be levied upon property passed and gone, no longer in the possession of the tax-payer, but in the possession of the Government—the only property the tax-payer has, being the securities of the Government.

The act in question seems, on the supposition the construction sought to be given it is correct, to have been framed under a sense of this difficulty.

It provides that moneyed corporations shall be taxable on—what?—on "a valuation"—a valuation of what? "On a valuation equal to the amount of their capital stock paid in, or secured to be paid in," &c.

If the act had provided they should be taxable on a "valuation of their property," it would have been plainly repugnant to the decision of the Supreme Court of the United States—and so these corporations are made taxable simply on "a valuation."

In order to a valuation there must be a subject, and the valuation is simply a determination of what the subject is worth in exchange.

Seventeenth Point.

The idea of a tax upon "capital stock" as a thing distinct from the property actually owned by the bank, is not well founded.

The capital of a bank differs in no sense from that of an individual, or copartnership. It is necessarily fixed at some sum, and the interests of the several corporators are represented by shares. But the capital itself is the property of the corporation. And we find, accordingly, the words "capital," "capital stock," and "property," used indiscriminately in the statutes relating to the taxation of corporations.

If, however, the *capital stock* of a bank is something else than its property, it becomes a matter of no moment how it is valued—whether at actual or nominal values. Its being the subject of taxation, arises from its existence as a different thing from the property owned by the bank.

So, if it is not a different thing, but the same thing, then it is not the subject of State taxation, if the property in which it consists is not such subject.

This position, however, has been refuted by the judgment of the Court of Appeals in tax cases since the decisions reported in 2 Black., 620, thus showing that "capital" means property.

Hanover Bank *vs.* Tax Commissioners, 27 Barb., 635.

Eighteenth Point.

It follows, from the previous considerations, that treating the tax as really a tax upon the *present* property of the banks, there must of necessity be deducted from the aggregate, all securities of the United States, and this plain duty cannot be avoided either by treating the term "capital" as meaning something different from the property in which it is invested, or by assessing the capital at a nominal amount independently of its mode of investment. In either of the latter alternatives the public securities are taxed.

Nineteenth Point.

If it be said that it is the institutions which are taxed, and not the property, in addition to what has been urged, we maintain that the institutions cannot be taxed in the mode proposed when such mode leads to an actual though indirect taxation of United States stocks.

The institutions acquired their securities under a state

of the law which exempted the securities from taxation, and if no longer exempt, it is obvious that the change has been effected by some act of State Sovereignty.

The right to control corporations cannot be wielded successfully for such a purpose, any more than the right to control individuals.

If these institutions exist at the will of the Legislature, still, while they do exist, they cannot be made the medium of taxing the General Government. All the functions of State Sovereignty, whether the power to tax, to license, to create and alter the powers and duties of corporations—all are subordinate to the supremacy of the Constitution of the United States.

Suppose a preamble to the act in question reciting the history of this controversy as follows: "Whereas, by an act of the Legislature of the State of New York, passed in the year 1857, banking corporations were taxed only upon the actual value of their capital stock.

"And whereas, in the year 1859, the Bank of the Commonwealth claimed exemption from taxation on so much of its capital as was invested in loans of the United States, and such claim was adjudged invalid in the Courts of the State of New York; but on appeal to the Supreme Court of the United States, was declared lawful and valid; and it was further adjudged by said Supreme Court that stocks of the United States are not the subject of State taxation, but are to be deducted from the aggregate of the tax-payer's property before taxation.

"Therefore, be it enacted, that all banks, banking associations, &c., 'shall be liable to a taxation on a valuation equal to the amount of the capital stock, &c.'"

Thus we should find, if the change from *actual* to *nominal* values be allowed as affecting the subjects of taxation, substituting institutions for property, by a single stroke, the credit of the United States declared by the highest tribunal *not to be taxable*, successfully taxed under a State law, passed within a few weeks after the decision was pronounced.

What is a *nominal* valuation—simply one that is not *real*, but artificial—verbal—a *nomen*.

Can a great constitutional right be dependent upon names? "Is the proposition to be maintained that the Constitution meant to prohibit names and not things?"

4 Peter, R., 433.

If, then, by a *nominal* or arbitrary valuation, a result is produced which is not *real*, and which could not have been effected on an *actual* valuation, we reach the conclusion that while the powers of the Government cannot be assailed directly, they may be indirectly, and as fully and lawfully as if assailed directly. This cannot be.

It is argued that the capital is to be treated the same as if it were lost. But it is not lost, but has been placed under the protecting power of the Government: while it seems to have been conceded in the Court of Appeals that because the capital was to be assessed at its actual value, so much as was invested in United States securities was exempt; but that a different rule obtains, when assessed at a nominal or arbitrary value. The right of exemption cannot depend upon a method of valuation. What is the thing taxed?—capital. What is to be valued?—capital. Then why should capital invested in government securities be unexempt when it is *arbitrarily* valued, and exempt when it is *actually* valued. There is no difference between the two cases, except that in the one the valuation is determined by the assessors from time to time, and in the other by the Legislature.

Twentieth Point.

There is no conflict in principle or interest between the United States and the State Governments upon this subject.

First.—In principle.

1. All the Constitutional means which the Government of the United States is authorized to employ for National

purposes are in derogation of State authority, and these means are necessarily reserved from the interference, legislation and dominion of the States. Otherwise they might be defeated or impeded.

2. The principle of the exemption of the credit of the Government from State taxation, is based upon the national sovereignty and the supremacy of the Constitution, by a direct grant of power from the people, and from the States. In this grant the people of New York and the State of New York in its corporate capacity, were grantors, and parted with or conceded a portion of their power. In this respect we have two Constitutions, one for domestic and the other for National purposes. The former is supreme over its subjects,—the latter is subordinate in respect to all the subjects of the former.

3. As the preservation of the General Government is of paramount consideration, and its Constitutional acts have been made SUPREME, the first duty is to sustain the National Constitution within the scope of its functions and powers.

Second—As to interest.

1. The power of borrowing money is essential to the continuance of the Government. It is a vital element of the national existence. It should not only be left untouched and untrammeled, but should be aided and promoted. People and States are all interested alike in the support of the General Government, as well as in the support of the State Governments, and all are bound to contribute to the maintenance of both.

3. So far as regards the people, it is only a question of the mode of taxation; for if they pay a tax to the State on the Government securities, this reduces the value of those securities and the Government must make up the loss on the loan by taxation. In other words, we have to support two Governments, so if the loan is exempt from taxation the exemption redounds to the benefit of the people. The result is eventually the same. If these loans are to be de-

preciated by a tax of 2½ per cent,, we shall have to supply the difference.

3. A loan of money to the Government, ordinarily abstracts nothing from the capital of the community. The money is not hoarded, but is returned within a brief period to the active industry of the country. It is not in fact taken from the taxable property, for although the lender cannot be taxed on the money which is no longer his, the money itself has passed into other hands and still remains the subject of taxation. If one hundred millions of money owned by the banks of New York, be loaned to the Government, and be disbursed by the Government to its creditors in New York, the property has only changed hands, and remains taxable the same as before it was loaned.

The seventeen hundred millions borrowed by the Government have been paid to the soldiers in the field, to artificers, ship-builders, &c., for supplies of food, clothing, munitions of war, and have found their way back through numerous channels, into the mass of the taxable property of the States.

But, if in addition to taxing the money thus loaned and returned, the State can tax the person who loaned the money to the Government, it is obvious the taxable capital would be doubled.

The State tax is an illustration of the law of return. As much property and money remain in the State after the tax is levied and disbursed, as there was before.

Smith's Wealth of Nations, 2, p. 272.

The position taken is illustrated by the following table of taxes for the last five years in New York, which shows an increase of personal estate of nearly fifty millions of dollars.

Real Estate.		Personal Estate.	
1860.	397,883,869.	1860.	178,747,837.
1861.	400,881,790.	1861.	174,624,306.
1862.	399,556,404.	1862.	172,406,081.
1863.	402,196,652.	1863.	192,000,161.
1864.	410,774,435.	1864.	223,920,505.

Twenty-First Point.

While there is ultimately no conflict of sovereignty, or of interest, on this subject between the State and its people and the United States, it cannot be overlooked that the power to borrow money was given by the Constitution, to meet all the exigencies of Government, and although the people have eventually to bear all burdens by the process of taxation, that process is necessarily tardy. When revolutions are impending and the arbitrament of the sword is invoked, fleets are to be built and equipped, and great armies are to be raised and armed, there is no time to wait for the tax-gatherer.

The Constitution was designed as the perpetual basis of a great government, and the powers vested in its ministers were intended for all the exigencies, trials and perils which might occur through all time. It contemplated insurrection, invasion and war; and its provisions were so framed, in the masterly wisdom of statesmanship and profound political philosophy, as to impart every function necessary to the efficiency and vigor of a National Government.

The power to borrow money on the faith and credit of the United States, has no superior. Without its possession this Government would perish. It should therefore be cherished. It was granted deliberately by all the people, and should be sustained rather than impeded by State authority. Neither mode nor form, nor scheme, nor plan can be countenanced, which in any measure or degree, directly or indirectly, immediately or remotely, interferes with the full and uncontrolled exercise of this power, or with the pledges of faith given by the United States in pursuance of it, or with the persons, bodies or corporations who have accepted those pledges, and contributed their property to the Government.

If the broad and firm ground of principle upon which is based entire immunity from State control of all the means of government within the scope of the Constitution, be impaired or taken away, in New York, under one mode,

in other States in other modes; the National Government, will be in danger of constant conflicts with the States.

There is no middle ground of safety or of sound construction. There must be entire exemption, or subjection to taxation.

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Bank of the Commonwealth.

Supreme Court of the United States.

DECEMBER TERM, 1864.

THE COMMISSIONER OF TAXES, &c.,

DEFENDANTS IN ERROR,

VS.

THE PEOPLE OF THE STATE OF NEW YORK, &c.,

PLAINTIFFS IN ERROR.

POINTS FOR DEFENDANTS IN ERROR IN THIS AND OTHER CASES CALLED "THE TAX CASES."

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JOHN E. DEVELIN,
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JAMES T. BRADY,
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Of Counsel for Defendants in Error.

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First. There is no jurisdiction in this Court over any of the cases at bar. No question arises in either of them under the Constitution of the United States. Their decision exclusively depended, in the Court of Appeals of New York, upon the constitution and legislation of that State.

Martin vs. *Hunter's Lessees*, 1 *Wheaton*, 304.
Miller vs. *Nichols*, 4 *Wheaton*, 311.
Commercial Bank, &c., vs. *Buckingham's Executors*, 5 *Howard*, 317.
Menard vs. *Aspasia*, 5 *Peters*, 505.

Second. If the Court entertain the cases, we then submit that the only question legitimately presented in these cases is, whether the State had the *power* to pass the act of 1863, under which the tax has been levied.

1st. The authority of the State to tax is one which, as Chief Justice Marshall said in *Weston* vs. *The City of Charleston*, (2 Peters, 449,) "is a right which, in its nature, acknowledges no limits." In *McCullough* vs. *The Bank of Maryland*, (4 Wheaton, 425,) the Chief Justice says that the principle controling the decision in that case is one which leaves the power of taxing the people and property of a State unimpaired, which leaves to a State the command of all its resources, and which places beyond its reach all those powers which are conferred by the people of the United States on the Government of the Union, and all

those means which are given for the purpose of carrying those powers into execution.

Mr. Justice Nelson, giving the opinion of this court when the tax cases were before it, in December, 1862, speaking of the respective powers of the National and State governments in regard to taxation, says: "Each is sovereign and independent in its sphere of action, and exempt from the interference or control of the other, either in the means employed or the functions exercised; and influenced by a public and patriotic spirit on both sides, a conflict of authorities need not occur or be feared."

The constitution of the State of New York contains "no provision which declares that taxes shall be assessed equally and according to value upon all the property of the citizens of the State," nor any other limitation.

2d. The former cases in this court rested on the New York statute of 1857, which provided that, "instead of taxing the nominal capital expressed by the words capital paid in or secured to be paid in, the officers were required to assess the capital stock *at its actual value.*" (See opinion of Denio, presiding judge of Court of Appeals, in the present cases, pages 16, 7.

Before the act of 1857, and under the revised statutes of New York, "it was *immaterial as to the character or description of property which constituted the capital, as the tax imposed was wholly irrespective of it.* The tax was *like* one *annexed to the franchise*, as a royalty for the grant." Such is the language of *Judge Nelson* in the former cases, and he adds, alluding to the effect of the law of 1857: "But since *the change of the system*, it is agreed the tax is *on the property* constituting the capital."

3d. The decision in this Court is, therefore, to the effect that if the tax had been laid under the system established by the Revised Statutes, it would have been valid, although the bank capital was made up wholly, or in part, of Government securities of the United States.

4th. In viewof this decision, the Legislature of New York passed the act of 1863, which provides that banks, and all monied corporations, &c., "shall be liable to a taxation on *a valuation* equal to the amount of their capital stock *paid in, or secured to be paid in.*" The plaintiff in error contended in the State courts that this law meant that the taxation should be applied to the capital stock which a corporation *owned or used in its business*, and that the tax was intended to be, not

on an "ideal thing," but upon the "*property*" of the corporation.

Such was the view of Mr. Justice Mullen, who gave a dissenting opinion in the Court of Appeals. But that Court held otherwise, and declared that "The system established by the act of 1857 was *abolished* by the act of 1863, and was *superseded* by the arrangements of that act;" that it was a "return substantially, and, so far as *this question* is concerned, *exactly* to the system of the Revised Statutes," affixing the tax to the "nominal capital."

See Judge Denio's opinion, p. 7.

If this be so, then the decision in this Court, and that of the New York tribunal, both sustain the validity of the taxation in question. An examination of the first two paragraphs in Judge Nelson's opinion conclusively establishes this proposition.

Third. This Court will not review the decision of the Court of Appeals on the *construction* of the law of 1863. That decision declares that the State has imposed the tax on the "nominal capital," as was done by the Revised Statutes, and this Court has adjudged that in such case the tax may be laid, like one annexed to the franchise, as a royalty for the grant. The tax in question is therefore valid.

The numerous cases appropriate to this point are collected in Holcombe's Digest, pp. 248, 249.

Williams vs. *Norris*, 12 *Wheaton*, 117.

Fourth. If by any possibility the construction of the act of 1863 should be considered in this Court, we submit that ours is the correct interpretation of that act, for the reasons already stated by Judge Denio in his very able opinion, which we deem it unnecessary here to set forth, and to which, we respectfully submit, that nothing need be added.

It was said in the courts below that the act of 1863 was "a premeditated evasion" of the judgment of this Court. On the contrary, it was legislation in conformity with the judgment of this Court, as we have already shown.

Besides, as Judge Denio remarks: "The arrangements for State taxation are within the uncontrolable discretion of the Legislature, whose motives are not subject to the criticism of the courts."

Fifth. The State of New York has not attempted to render the national securities amenable to taxation. They en-

joy immunities under the Constitution, and the adjudications of this Court. But the State exercises its power to make monied corporations contribute, like natural persons, to the support of the Government whose protection they enjoy. This it has a right to do on any basis of assessment, however arbitrary, while acting within the sphere of its legislative control. If a monied corporation, the moment its capital is paid, can distribute its stock, and by investing the whole capital in Government securities escape entirely from taxation, it follows that, while it derives its existence from the State, it need contribute nothing to the maintenance of the State. And this is the more remarkable in view of the fact that by the Revised Statutes of New York, Part I, chapter 13, section 7, it is provided that "*The owner or holder of stock in any incorporated company liable to taxation on its capital shall not be taxed as an individual for such stock.*" This is still the law.

Case of Providence Bank, 4 *Peters*, *pages* 561, 562.
State Bank of Ohio vs. *Knoof*, 16 *Peters*, *page* 387.

Sixth. Other questions were involved in the arguments below, such as the time when the act of 1857 began to operate on the corporations, and whether the tax could properly be laid on corporations whose liabilities equal their capital, but we submit that these questions can not be investigated in this Court. If they should, we refer to Judge Denio's opinion in support of our case.

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U. S. Supreme Court.

UNITED STATES SUPREME COURT.

THE PEOPLE OF THE STATE OF NEW YORK, *ex rel.* THE BANK OF THE COMMONWEALTH,
Plaintiffs in error.

agst.

THE COMMISSIONERS OF TAXES AND ASSESSMENTS FOR THE CITY AND COUNTY OF NEW YORK,
Defendants in error.

Points for defendants in error.

THE PEOPLE, *ex rel.* THE BANK OF COMMERCE,
Plaintiffs in error,

agst.

THE SAME,
Defendants in error.

The defendants in error are officers appointed under

Chapter 302 of the laws of the State of New York for the year 1859 to make out, from year to year, a list or or assessment roll, in which shall be inserted, among other items, the personal property subject to taxation in the City of New York, and also the names of the respective owners of such property. Sec. 9 of art. 2 of title 2 of ch. 13 of 1st part R. S.; 1. N. Y. R. S., p. 909, 5th ed.

In the performance of this duty, these defendants, prior to May 1st, 1863, inserted in such assessment rolls, for the year 1863, that the plaintiffs in error, the Bank of the Commonwealth, were liable to taxation on $561,900, being the sum stated by the said plaintiffs as the amount of their capital stock paid in, less the portion thereof invested in real estate (Er. book, ff. 21, 22), and that the plaintiffs in error, the Bank of Commerce, were liable to be taxed on the sum of $, being the sum stated by them as the amount of their capital stock paid in, or secured to be paid in, less the part thereof invested in real estate.

Each of the plaintiffs in error claims that no amount whatever should, in either case, have been inserted in the assessment-rolls by the defendants in error, on the ground that these respective amounts were not liable to taxation, because they were at the time invested in the public stocks of the United States, which, by the Constitution and Laws of the United States, are exempt from taxation by State authority.

The plaintiffs in error are each Banking Corporations or associations incorporated, organized, and doing busi-

ness under and by virtue of the general banking laws of the State of New York, passed in 1838 (Ch. 260, of Laws of 1838), and laws supplementary thereto and amendatory thereof. (Er. b. ff., 8, 9, N. Y. R. S., Vol. 2., p. 551. 5th ed.)

In the year 1863, the Legislature of the State of New York enacted a law in the words following (Chap. 240, Laws 1863 :)

SEC 1. All banks, banking associations and other moneyed corporations and associations shall be liable to taxation on a valuation equal to the amount of their capital stock paid in or secured to be paid in, and their surplus earnings, (less ten per cent. of such surplus), in the manner now provided by law, deducting the value of the real estate held by any such corporation or association, and taxable as real estate.

SEC. 2. This Act shall take effect immediately.

Under this act, the defendants in error claim that they are justified in their action, whilst the plaintiffs in error insist that the enactment is void, as being in contravention of the Act of Congress of 25th February, 1862, and of the eighth section of the first article of the Constitution of the United States. (Er. b., fols. 30 and 31.)

POINTS.

FIRST POINT.— Associations formed under the New York General Banking Law of 1838, are corporations, and exclusive of any contract between the State of

New York and the plaintiffs in error, the Legislature of the former has the right to tax the latter at discretion.

Bank of Watertown *vs.* Assessors of Watertown, 25 Wendell R., 686; 1 Hill R., 616.
People *vs.* Supervisors of Niagara, 1 Hill R., 20., 7 Hill R., 504.
The Newark City Bank *vs.* Assessors of the Fourth Ward of the city of Newark.
State *vs.* Granville Alex. Soc., 11 Ohio R., 1.
Ellis *vs.* Marshall, 2 Mass. R., 277.

Section 8, of Title 3, of Chapter 18, of the Revised Statutes of New York (2 N. Y. R. S., p. 597, 5th ed.), enacted in 1830, is in these words:

"The charter of every corporation that shall "hereafter be granted, shall be subject to altera- "tion, suspension, and repeal in the discretion of "the Legislature."

By section 32, of chapter 260, of the Laws of 1838, being the General Banking Law of the State of New York, under which the plaintiffs in error are incorporated and do business, it is enacted that the Legislature may, at any time, alter or repeal that act.

Under these decisions and enactments, therefore, there is no contract between the people of the State of New York and the plaintiffs in error, limiting the right to tax them, or in any other manner, to modify their charters.

SECOND POINT—By the Tax Laws of the State of New York, so much of the capital of all Corporations as is not invested in real estate is treated as personal property, and made liable to taxation: and, for the purposes of taxation, those laws treat the sum of money paid in at their organization, as continuing to exist in its original form.

§ 1 of Title 1st of Chapter 13, of 1st Part of New York Revised Statutes. (1 N. Y. R. S., p. 905, 5th ed.)

Section fourth of that title is in these words: "Personal estate and personal property * * "* * shall be construed to include such "portion of the capital of incorporated companies, "liable to taxation on their capital, as shall not be "invested in real estate."

The capital stock, therefore, of the plaintiffs in error, under this definition, is personal property, liable to taxation under the tax laws of the State of New York.

THIRD POINT—The Tax Laws of the State of New York became, as soon as the plaintiffs in error were incorporated, a part of their Charter.

At the time they came into existence, the laws of the State of New York declared that all personal

estate within that state should be liable to taxation; and that, that term should be construed to include such portion of the capital of the plaintiffs in error as should not be invested in real estate. §§ 1 & 4 of Title 1st of Chapter 13 of Part 1st of N. Y. R. S. (1st R. S. pp., 905, 906, 5th ed.)

FOURTH POINT—The Statute of the State of New York of 1863, (Chapter 240, of the Laws of 1863,) is simply an amendment of the Tax Laws, which existed at the time of the incorporation of the plaintiffs in error, and is authorized by the decisions and enactment cited under the first point above.

FIFTH POINT—The decisions of the highest court of a state as to the construction and meaning of the Statutes of such state are controlling in this Court, as much so as the decisions of this Court, as to the construction and meaning of the Constitution of the United States, treaties and other subjects within its exclusive jurisdiction are conclusive on the State Courts.

Towle *vs.* Forney, 4 Kern. R. 423.
D'Wolf *vs.* Rabaud, 1 Peters R. 476.
Bell *vs.* Morrison, 1 Peters R. 351.
Gardner *vs.* Collins, 2 Peters R. 58.

The Court of Appeals of the state of New York

has defined the meaning of the Statute of that state, passed in (Chap. 240, of the Laws of) 1863.

People, *ex rel.*, The Bank of the Commonwealth, Appellants, *vs.* The Commissioners of Taxes and Assessments of the city of New York, Respondents.

In this case the words "moneyed corporations shall be liable to taxation on a valuation, &c." as used in the Act of 1863, have been defined and declared to mean nothing more than if the Act had said "the corporations shall be taxed on an amount equal to their capital stock paid in, &c."

SIXTH POINT—The same high court of the State of New York has also defined the meaning of the words "Capital Stock" as used in the tax laws.

The Mutual Insurance Company *vs.* the Supervisors of Erie; 4 Comst., 442.
The Sun Mutual Insurance Company *vs.* The Mayor, &c., of the City of New York, 4 Seld., 241.

In each of these cases, involving questions, arising under the Tax Laws of the State of New York, the term "Capital Stock" was declared to mean the "original amount of money paid in or secured to be paid in," to enable a moneyed Corporation to transact its business.

The above New York Statute of 1863, therefore, amounts to nothing more than the establishing of an arbitrary rule of taxation upon moneyed Corporations, by which they are directed to pay a tax upon an amount equal to the sum of money originally paid or secured to be paid in by the subscribers to their stock, to enable them to transact business.

SEVENTH POINT—The power of taxation being a sovereign power, essential to the existence and administration of every government, it must be concluded that every state and government is unlimited in the exercise of that power, provided that in selecting the subjects to be taxed, it confines itself to those within its jurisdiction. The government, having jurisdiction of the subject to be taxed, is the sole judge both as to the propriety and expediency of taxing it and as to the extent and amount of such taxation. Jurisdiction of the subject once acquired, the government in the exercise of the taxing power is omnipotent.

Town of Guilford *vs.* Supervisors of Chenango, 3 Kernan, 143.

Brewster *vs.* City of Syracuse, 19 N. Y., p. 116.

This construction of the taxing powers of a government is in entire accord with views of Marshall, Chief Justice, as contained in his opinion in case of McCulloch *vs.* State of Maryland, 4 Wheaton, pp. 428 and 429.

That the relators are within the jurisdiction of the State government, which has imposed a tax upon them, cannot be questioned, since they are the creatures of that government, and their very existence is dependent upon its pleasure.

Under the construction which has been placed upon the Act of 1863, by the Court of Appeals, there can be nothing objectionable in the tax imposed upon the Relators. The construction of the act adopted by that court is, that the tax is not upon the property of the Relators, nor yet upon the stocks in which it is invested, but upon the franchise.

The State, by this act of 1863, merely compels the plaintiffs in error, in return for the benefits conferred upon them by their charters, to contribute a certain sum towards its support, and lays down the rule by which such sum is to be ascertained.

EIGHTH POINT.—The judgment of the Court of Appeals of the State of New York, should be affirmed.

JOHN E. DEVELIN,

of Counsel for Defendants in Error.

SUPREME COURT OF THE U. S.

SUPREME COURT OF THE U. S.

THE PEOPLE OF THE STATE OF NEW YORK, *ex rel.* THE BANK OF THE COMMONWEALTH, *Plaintiff in error*,

vs.

THE COMMISSIONERS OF TAXES OF THE CITY OF NEW YORK, *Defendants in error.*

THE SAME, *ex rel.* THE BANK OF COMMERCE,

vs.

THE SAME.

ADDITIONAL POINTS FOR DEFENDANTS IN ERROR.

First. The act of April 29, 1863, which was in force when the assessments in question were made, did not assume to tax the bonds or securities issued by the Federal Government, and owned by the banks, nor to tax the banks on account of such securities, or the funds of the Bank invested in them.

By this law, the tax is imposed upon the corporation without regard to the amount of capital which it in fact owned and possessed, and without any reference to the character or description of the securities in which the corporation had invested its funds.

1. This is the literal meaning of the statute. It declares that "all banks, banking associations and other moneyed corporations and associations, shall be liable to taxation on a valuation equal to the amount of their capital stock paid in or secured to be paid in and their surplus earnings (less ten per cent. of such surplus,) in the manner now provided by law, deducting the value of the real estate held by any such corporation or association and taxable as real estate.".

Laws of N. Y. for 1863, *p.* 435, *chap.* 240.

(1.) These corporations are created by the authority of the State, and endowed by it with certain extraordinary and valuable privileges and franchises. (*Laws of* 1838, *p.* 245, *chap.* 260; the same with amendments found in *5th ed. of Revised Statutes, vol.* 2, *p.* 551, *&c.*) The tax is imposed upon this artificial person directly and specifically; not upon its property. It is the same in substance as though the State required the corporation to pay annually, into the State Treasury, a specified sum for the privileges and franchises granted. It is to be paid irrespective of the character of the securities held by the bank.

(2.) The policy of the State is to compel these institutions, created by it, to contribute to the support of the State Government, as compensation for the franchises granted and the protection enjoyed. Instead of requiring a specified sum to be paid annually, the law requires the corporation to pay to the State annually, an amount equal to the tax which would be levied for State purposes, "on a valuation

equal to the amount" of the nominal capital stock of the bank. This is more just than to exact a fixed sum annually.

(3.) The reference in the statute to "a valuation equal to the amount of their capital stock, paid in or secured to be paid in, and their surplus earnings," is only for the purpose of fixing the amount which the corporations are annually to pay for their franchises. It has no regard to the actual capital owned by the bank, or to the securities, or the value of the securities, held by it. The distinction between capital paid in or secured to be paid in, and that actually owned and possessed by the corporation, is recognized and well defined by the laws of New York.

See Opinion, per Denio, Ch. J., p. 5.

Bank of Utica vs. City of Utica, 4 *Paige*, 399, 401–402.

People vs. Supervisors of Niagara Co., 4 *Hill*, 20.

Farmers' Loan and Trust Co. vs. The Mayor &c. of New York, 7 *Hill*, 361.

Bank of Commerce vs. New York City, 2 *Black.* 620, 628–9, *per Nelson, J.*

2. This is the correct interpretation of this act, construing it in the light of the legislation of the State of New York on the subject, and the decisions of the State Courts.

(1.) Prior to 1857, and during many years, banking corporations were not taxed upon their actual capital, or upon the personal estate actually owned by them. They were taxed irrespective

of the amount or value or character of their personal estate.

Revised Statutes of N. Y. vol. 1, 1*st ed., pp.* 414 *and* 415, §§ 2, 6.
4 *Paige*, 399, 401, 402.
4 *Hill*, 20.
2 *Black.* 620, 628–9.
7 *Hill*, 261.
Opinion, per Denio, Ch. J., pp. 8, 9, 10.

(2.) In 1857, this was changed by a law which directed the capital stock of these corporations to be assessed at its actual value, and "taxed in the same manner as the other personal and real estate of the county."

Laws of N. Y. for 1857, *vol.* 2, *p.* 253, *chap.* 456.
Opinion of Denio, Ch. J., pp. 6, 7.

(3.) By the act in question, the Legislature abolished as to these corporations the mode of taxation established by the law of 1857, and evinced clearly that they were not to be taxed upon or for the personal estate owned by them, but upon a valuation to be arrived at in the manner prescribed and without regard to whether they had or had not any personal estate.

See the act.

(4.) This is the construction of the statutes by the courts of New York, and upon such a question their construction will have great weight in this Court.

Cathcart vs. Robinson, 5 *Peters*, 263, 279.
Polk's Lessee vs. Wendall, 9 *Cranch*, 87.
Elmendorff vs. Taylor, 10 *Wheaton*, 152.

Second. This act of the legislature of New York is not repugnant to the constitution of the United States.

1. The act was not in violation of any vested right of the plaintiffs in error.

(1.) By the statute by virtue of which they were incorporated, as well as by a general statute in force when this act was passed, the State reserved the right and power to alter or repeal their charters at any time. Under this reservation, greater changes by the State legislature, than that effected by the law in question, as to the rights and duties of these corporations and their stockholders, have been sustained by the State and Federal Courts.

1 *R. S. p.* 600, § 8, 1*st ed.*
Laws of N. Y. for 1838, *p.* 253, § 32.
In the matter of Oliver Lee's Bank, 21 *N. Y. p.* 9.
This case affirmed by this Court.
In the matter of Reciprocity Bank, 22 *N. Y. p.* 9.

(2.) Again, the law of 1863 merely revived the system of taxation, as to these banks, in force when they were incorporated.

See sub. 2 *of first Point.*
2 *Black.* 620, 628–9.

2. Nor is the act of 1863 in any legal sense repugnant to the power granted to Congress to borrow money, because:

(1.) It does not impose any tax upon the stocks or bonds issued by the United States. "A tax on the nominal capital of a bank, without re-

gard to the nature or value of the property composing it, is annexed to the franchise as a royalty for the grant, and not a burden imposed on the property itself."

2 *Black.* 620.

See first point.

(2.) If it be conceded that the burden imposed by the act of 1863, upon the banks, indirectly affects the United States securities, by diminishing the inducements to the banks to invest in them, this does not render the act invalid.

a. The State clearly without violating the Constitution of the United States, might, by the original act creating them, have required these banks to make State stocks or mortgages, the basis of, and security for the redemption of the notes they were authorized to issue, and to invest all their capital and funds in these securities, to the exclusion of United States Stocks.

Laws of N. Y. for 1849, *p.* 455.

b. The State was under no obligation to create or authorize the existence of these banks. It might create them or not in its discretion. It is not bound to preserve them, but may under the power reserved repeal their charters whenever the legislature deems it for the interest of the State to do so. Chief Justice Marshall in *McCullough vs. the State of*

Maryland, 4 *Wheaton*, *p.* 429, says: "The sovereignty of a State extends to everything which exists by its own authority or is introduced by its permission."

c. The fact that these banks would be of service to the Federal Government in borrowing money imposed no duty on the State to create or authorize them; nor does the fact that the repeal or alteration of their charters may injuriously affect the market value of United States bonds restrain the power of the State to repeal or alter their charters at will.

3. If it be argued that the act of 1863 was enacted to evade the Constitution of the United States, and the judgement of this Court holding that United States securities are not taxable; that it is an attempt by the State legislature to do indirectly what it had no power to do directly, we answer:

(1.) That every presumption is in favor of the law and against the idea that the State legislature was influenced by unworthy motives or attempted to accomplish what was improper.

(2.) That it is quite apparent that the legislature did not pass this act with any intent to impede the Federal Government or evade any constitutional duty or obligation, but for the purpose of preventing these corporations from

evading their fair share of State burdens as the price of the franchises and protection granted them by the State.

a. That they should contribute to the burdens of the State Government in return for the franchise they enjoy is clearly just.

b. During nearly thirty years next prior to 1857 they were made to contribute by taxes levied upon them with reference to the amount of capital with which they were organized and without regard to its value or the securities in which it was invested. The plaintiffs in error were organized while this policy was the settled policy of the State.

See 2 *sub. first point.*

c. In 1857, to relieve those corporations which had lost a large portion of their capital from what they claimed to be injustice, the act was passed directing the capital of the banks to be assessed at its actual value.

Laws of 1857, *vol.* 2, *p.* 253.

d. Immediately the banks, under this law, attempted to evade the payment of the price of their franchises, on the ground that they were exempt from any taxation to the amount of the United States Stocks held by them.

c. When the Court held that under the law of 1857 they could thus escape any payment for their franchises, the legisture, as we submit, very properly enacted the law in question, by which the law of 1857 was abrogated, and these institutions placed in the same relation to the State which they occupied when organized and prior to 1857.

(3.) In fact, this act of 1863 does not, in a legal sense, impede or obstruct the exercise of the power of the Federal Government to borrow money. It does not impose any tax upon the Federal stocks or securities. The tax is upon the corporation. Its incidental effect upon the securities is the same in character as a State capitation tax upon its citizens, or a tax upon the stock of one of their State banks held by an individual, or a tax upon a citizen on account of stock owned by him in a bank chartered by the United States Government. State taxation of this character would not be unconstitutional.

4 *Wheaton*, 316, 436.
2 *Peters*, 465–6.

Third. But if it be true that the law of 1863 makes it less desirable for the banks chartered by the State to invest their capital in United States Stock, it was within the constitutional power of the State to enact it.

1. The objection to the act is, that it interferes with the constitutional power of the Federal Government to borrow money, because its effect is to lessen the inducements to these banks to invest their funds in United States Stocks.

2. But the State was under no obligation to create these corporations to aid directly or indirectly the Federal Government in exercising its powers. The State is not bound to continue them because they do so. They are created by its power, and by the express provisions of their charter, exist only during its pleasure. They were created for the benefit of the people of the State, and whenever, in the judgment of the legislature, the good of the State requires it, they may be abolished, notwithstanding they were beneficial to the Federal Government in the exercise of its power to borrow money.

3. Hence, while the State cannot tax the bonds issued by the United States held by these institutions, it can compel them to contribute to State burdens as the price of their existence the same amount as though they did not hold such bonds. The fact, if it be so, that this action of the State will tend to prevent these institutions from investing in United States Bonds, does not render the same unconstitutional, any more than their non-creation would be a failure by the State to perform its constitutional duty, or the repeal of their charters would be a violation of the constitution. Being the creatures of State power the State may legitimately so create and burden them, that they shall subserve the interest of the State, rather than the interest of the Federal Government. It is to be observed that in this action the State does

not in any just sense obstruct the exercise of its legitimate power by the Federal Government. It merely fails to give it incidental aid. It so legislates that the State, rather than the Federal Government, derives advantages from an institution created and continued by legitimate State authority.

Fourth. It is believed that no decision of the United States or State Courts goes the length of holding that the action of the legislature of New York, under consideration, is in violation of the constitution. In the language of Chief Justice Marshall, this Court "will in no doubtful case pronounce a legislative act to be contrary to the constitution," and reverse the judgment of the court of last resort of one of the States upon the construction and effects of its statutes. (*Dartmouth College vs. Woodward*, 4 *Wheaton*, *p.* 625.) It is submitted that the act of the legislature in question is within the legitimate power of the State; that the exercise of such power does not and can not, in any proper sense, impede or obstruct the exercise of the paramount powers of the Federal Government; and therefore, that the judgment of the Court of Appeals of New York should be affirmed.

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